SUPREME COURT OF THE UNITED STATES.

No. 240.

SAMUEL BLAGGE AND JOHN E. SOPER, PLAINTIFFS IN ERROR,

vs.

THE STATE OF NORTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Writ of error	1	1
Bond	3	1
Record of case in superior court of Beaver county	6	2
Certificate of clerk of county court	12	5
Opinion of supreme court	12	5
Judgment	13	6
Certificate of clerk of supreme court	14	6
Citation	15	7
Citation	16	7
Citation	17	7

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Judgment	13	6
Certificate of clerk of supreme court	14	6
Citation	15	7
Citation	16	7
Citation	17	7

1 UNITED STATES OF AMERICA, *North Carolina District, ss:*

The President of the United States to the honorable the judges of the Supreme Court of the State of North Carolina, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court before you, being the highest court of law and equity of the said State in which a decision could be had in the said suit, between the State of North Carolina and Samuel Blagge and John E. Soper, wherein was drawn in question the validity of a statute or ordinance of and an authority exercised under the said State, on the ground of its being repugnant to the Constitution and laws of the United States, and the decision was in favor of such its validity, and against the exemption specially set up or claimed under said Constitution and laws of the United States, a manifest error hath happened to the great damage of the said Samuel Blagge and John E. Soper as by their complaint appears.

2 We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of April next, in the said Supreme Court, to be then and there held that the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six.

Issued the 1st day of March, 1867.

[SEAL.] N. J. RIDDICK,
Clerk of the Circuit Court of the United States
For the Dist. of North Carolina.

3 Supreme Court of the United States.

THE STATE OF NORTH CAROLINA
vs.
S. BLAGGE and JOHN E. SOPER.

Know all men by these presents, that we, S. Blagge, P. Merwin, and J. Rosseter, are held and firmly bound unto the State of North Carolina in the sum of four thousand ($4,000) dollars to be paid to the said State, her certain attorneys or assigns, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 22d day of February, A. D. 1867.

Whereas, the above-named S. Blagge and John E. Soper have presented a writ of error to the Supreme Court of the United States, to

reverse the judgment rendered in the above-entitled suit by the supreme court of the State of North Carolina: Now, therefore, the condition of this obligation is such, that if the said Blagge and Soper shall prosecute their said writ of error to effect, and answer all
4 damages and costs if he shall fail to make good his plea, then this obligation to be void, otherwise the same shall be and remain in full force and virtue.

SAM. BLAGGE. [SEAL.]
P. MERWIN. [SEAL.]
JOHN ROSSETER. [SEAL.]

Sealed and delivered in the presence of—
J. P. BRIT.

STATE OF NORTH CAROLINA, *Craven County:*

On this 22d day of February, A. D. 1867, before me, Wm. G. Bryan, personally appeared P. Merwin and John Rosseter, who, being duly sworn according to law, say that they are severally worth four thousand dollars over and above their just debts and liabilities.

In testimony whereof, I have hereunto set my hand and seal the day and year first above-written.

[SEAL.]

WM. G. BRYAN,
Cl'k of Craven County Court.

5 The bond is approved, and the writ of error is allowed.

WILL. H. BATTLE,
One of the Judges of the Supreme Court of North Carolina.

6 STATE OF NORTH CAROLINA, *ss:*

In the supreme court of North Carolina, begun and held at the capitol, in the city of Raleigh, on the second Monday of January, in the year of our Lord one thousand eight hundred and sixty-seven, by and before the Honorable Richmond M. Pearson, chief justice, and the Honorable William H. Battle, and the Honorable Edwin G. Reade, judges of the same court.

Be it remembered, that heretofore, to wit, on the twenty-first day of December, in the year of our Lord one thousand eight hundred and sixty-six, there was filed in the office of said court the transcript of an appeal from the superior court of law of Craven county, wherein the State is plaintiff and Samuel Blagge and J. E. Soper are defendants, in the words and figures following; that is to say:

Superior court of law.—Fall term, A. D. 1866.

STATE OF NORTH CAROLINA, *Craven county:*

Be it remembered, that at a superior court of law, begun and held for the county of Craven, at the court-house in Newbern, on the fourth Monday after the fourth Monday of September, in the year of our Lord one thousand eight hundred and sixty-six, before the Honorable David A. Barnes, judge, upon the oath of John H. Richardson, foreman, S. W. Chadwick, Jesse H. Holton, S. S. Biddles, Joel Kin-

cey, E. Hubbs, W. D. Ferebie, James L. Murphy, Lewis Lee, Cicero Green, W. H. Bucklin, John Osgood, Enoch Lane, Clifford F. Simpson, James S. Lane, D. P. Whitford, John B. Wooten, George W. Charlton, good and lawful men of the county aforesaid,
7 duly summoned, drawn, and sworn, and charged to inquire, for the State, of and concerning all crimes and offences committed within the body of the said county, it is presented in manner and form following, that is to say:

Superior court of law.—Fall term, A. D. 1866.

STATE OF NORTH CAROLINA, *Craven county:*

The jurors for the State, upon their oath, present that at and in the county aforesaid, on the tenth of September, 1866, one F. M. Harper was, and since then hath been, and still is, sheriff of said county, and as such authorized and required to ascertain and collect divers taxes and other dues to the State, before then levied by law upon divers persons in said county, and to this end to examine on oath all persons in said county liable to taxes, touching the subject matter thereof; and that Samuel Blagge and J. E. Soper, on the day and year aforesaid, were, and for a long time previous thereto had been, and still is, in the county aforesaid, a merchant, carrying on the business of buying and selling goods, and as such had theretofore made large purchases of goods, wares, and merchandise other than cotton, tobacco, turpentine, rosin, tar, spirituous liquors, wines, and cordials, on the amount whereof he had become, and then and there was liable to taxes accruing to the State as aforesaid; and that in order to ascertain the amount of said purchases and the taxes due thereon, the said F. M. Harper, sheriff as aforesaid, being then and there duly empowered to administer an oath, for the purpose afore-
8 said, then and there offered to administer the same to the said S. Blagge and J. E. Soper, and to examine him, the S. Blagge and J. E. Soper on oath, touching the amount of his purchase as aforesaid, and the taxes accruing against him therefor; and that the said S. Blagge and J. E. Soper then and there, although often requested and required so to do, wilfully, unlawfully, and contumaciously neglected and refused to be sworn, and to disclose the matters and things touching his liability for taxes as aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

W. S. FAIRCLOTH, *Solicitor.*

Whereupon, the sheriff of said county is commanded that he cause the said S. Blagge and J. E. Soper to come and answer. And afterwards, to wit, at the term of said court, begun and held for the county aforesaid, on the fourth Monday after the fourth Monday in September, in the year of our Lord one thousand eight hundred and sixty-six, before the Honorable David A. Barnes, judge, cometh the said S. Blagge and J. E. Soper, in their own proper persons, and having heard the said indictment read, they, the said S. Blagge and

J. E. Soper, saith that they are not guilty thereof, and of this they put themselves upon the country; and W. S. Faircloth, solicitor, who prosecutes for the State in this behalf, doth the like. Therefore, let a jury come, of good and lawful men, by whom the truth of the matter may be better known.

And thereupon, the following jurors, to wit: William Brewer, Josiah Single, John Bryan, Alex. Harvey, William B. Bell, G.
9 W. Hardison, H. P. Whitehurst, T. G. Sparrow, James Roberts, J. B. Hilton, J. H. Hunter, F. C. Haden, being chosen, tried, and sworn to speak the truth of and concerning the premises, in the said indictment specified, do say, upon their oath, that the said S. Blagge and J. E. Soper are guilty thereof, in the manner and form as charged in the bill of indictment. And it is thereupon considered by the court that the said S. Blagge and J. E. Soper shall pay a fine of two thousand dollars, and that they stand committed to the custody of the sheriff until the said fine and the costs of this prosecution be paid.

From the above judgment the said S. Blagge and J. E. Soper pray an appeal to the Supreme Court, and it is allowed them upon their giving bond, with G. W. Dill and John D. Flanner as sureties. Appeal bond executed and herewith sent.

Statement of the case by Honorable David A. Barnes, judge.

This was an indictment for a misdemeanor for refusing to render under oath to the sheriff of Craven county the amount of taxes due from the defendants, under an ordinance of the convention entitled "An ordinance to provide revenue for the year 1865," to wit: from January 1 to July 1, 1865, tried at the fall term, 1866, of Craven superior court, before Barnes, judge. It was in evidence that F. M. Harper was elected sheriff of Craven county by the people, at an election held in November, 1865, and at the December term of the county court of Craven county he duly qualified as such and gave the
10 bonds required by law, and thereupon entered on the duties of his office, and was still acting as sheriff and had continued so to act from the time of his qualification. That the said F. M. Harper, acting as sheriff aforesaid, in the month of October, 1866, prior to the finding of the bill of indictment, demanded a statement on oath from the defendants, who were parties in trade, of the amount of taxes due and owing by them under the ordinance of the convention to provide revenue for the year 1865, and that they refused to make such statement and pay said taxes, and thereupon gave bond and security for their appearance to the fall term of the superior court, 1866, of Craven county. It was further in evidence that the defendants, as partners in trade, were merchants, doing business in the city of Newbern, N. C., during the whole of the year 1865, dealing in groceries, such as flour, sugar, coffee, spirituous liquors, tobacco, &c. That they purchased and sold these articles, both before and after the
18 October, 1865. It was also in evidence that until May, 1866, the had received a license to trade, as aforesaid, from the supervising

special agent of the Treasury Department of the United States, and had paid a tax of one per cent. on their purchases to the military authorities then occupying Craven county, and a tax varying from three to five per cent. to the government of the United States, as required by the War Department. That they supplied the
11 army and the country within the Federal lines at the time. That by orders from the War Department, this system of taxation was discontinued in May, 1865, and thereafter during that year the defendants paid the internal revenue tax imposed by the act of Congress, and continued to trade under a license from the said supervising agent. That there were no civil officers in the county of Craven in the exercise of their functions prior to the organization of the provisional government in North Carolina, and that up to that time Newbern was in the possession of the federal forces. It further appeared that the said F. M. Harper was provisional sheriff of the county of Craven, but failed to execute bonds, as required by the provisions of the aforesaid ordinance. That in the month of January, 1866, as provisional sheriff, he demanded a statement on oath from the defendants of the amount of taxes due from them under the ordinance aforesaid, which they refused to render, and gave bond and security for their appearance at the spring term, 1866, of Craven superior court, at which term they were indicted for such refusal, and convicted; and they appealed to the supreme court, which court granted a new trial. And at the fall term, 1866, of the superior court of Craven, the solicitor entered a nolle prosequi on said indictment, and they were tried under an indictment found at the fall term, 1866, of Craven superior court. The court charged the jury that if
12 they believed the evidence, the defendants were guilty. There was a verdict of guilty, and judgment accordingly, from which judgment the defendants prayed an appeal, and it was granted.

I, William Geo. Bunson, clerk of the superior court of law of Craven county, do hereby certify that the foregoing is a full, true, and perfect transcript of the records of said court in the case of the State against S. Blagge and J. E. Soper.

In testimony whereof, I do hereunto subscribe my name and affix the seal of said court, at office, in Newbern, this 19th day of , A. D. 1866.

[L. S.] WM. GEO. BUNSON, *Clerk.*

And now, at this term, to wit: January term, 1867, as aforesaid, the opinion of the court is delivered by the Honorable William H. Battle, one of the judges thereof, as follows:

After the venire de novo was awarded to the defendants, at the last term of this court, the sheriff of Craven county, having been previously qualified by giving bonds, &c., again demanded from them an account on oath of all the purchases of goods, wares, and merchandise which they had made as merchants during the year 1865, and upon their refusal to comply, he bound them over to the next term of the superior court of law for the county of Craven, at which term they were tried upon a new indictment, convicted, and a judgment given

against them, from which they appealed. Upon the second trial the facts appeared in all essential particulars the same with those
13 which were proved against Josiah S. Bell, whose case has been considered and decided at the present term of the court. Their counsel has, indeed, objected that the sheriff who made the second demand upon them had no right to bind them over to court under the act of 1866, (see acts of the special session of 1866, ch. 19,) by the authority of which he was acting. In this he is mistaken, as the act gives to the sheriffs who proceed under it the same powers and impose upon them the same duties as were given to and imposed upon the provisional sheriffs by the ordinance of the convention of the 18 October, 1865. As the present case, then, does not differ in any material particular from that of the State *vs.* Bell, to which we have referred, it must have the same result, which is, that the judgment must be affirmed.

Judgment.

This cause came on to be argued upon the transcript of the record from the superior court of law of Craven county. Upon consideration whereof, this court is of opinion that there is no error in the record and proceedings of the said superior court. Therefore, it is ordered, that the opinion of this court, as delivered by the Honorable William H. Battle, one of the judges thereof, be certified to the said superior court, to the intent that the judgment be affirmed, and further proceedings be had therein. And it is considered and adjudged that the State recover against the said Samuel Blagge and John E. Soper, the defendants, and George W. Dill and J. D. Flanner, their
14 sureties, for the appeal from the said judgment, as appears by the appeal bond sent up with and forming part of the record in this court, the costs in this court incurred, and let execution issue therefor.

Since the rendition of the foregoing judgment, writ of error allowed.

Certified by E. B. FREEMAN, *Cl'k.*

STATE OF NORTH CAROLINA:

I, Edmund B. Freeman, clerk of the supreme court of North Carolina, do hereby certify that the foregoing is a full, true, and correct transcript of the case, the State against Samuel Blagge and John E. Soper, as appears of record in this court.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at the city of Raleigh, this 21 day of March, 1867.

[SEAL.] E. B. FREEMAN, *Clerk.*

[5 ct. stamp.]

I send herewith the citation, bond, and writ of error.

E. B. FREEMAN, *Cl'k.*

Endorsed:

Blagge and Soper, pl'ffs in error, ag't the State of North Carolina. Transcript from supreme co., N. C. Cl'k's fees, $9.

15 UNITED STATES OF AMERICA, *ss:*

To the State of North Carolina, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the Monday of next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of North Carolina, wherein S. Blagge and J. E. Soper are plaintiffs, and the said State of North Carolina is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable , one of the justices of the supreme court of the State of North Carolina, this 26th day of Feb'y, A. D. 1867.

R. M. PEARSON, *Ch. J. S. C.*

Endorsed: Citation.—(Copy.)

16 STATE OF NORTH CAROLINA, *ss:*

To Jonathan Worth, governor of North Carolina, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 1st Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of North Carolina, wherein Josiah L. Bell is plaintiff, and the State of North Carolina is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Will. H. Battle, a judge of the said supreme court of the State of North Carolina, *States* this day of March, in the year of our Lord one thousand eight hundred and sixty-seven.

WILL. H. BATTLE,
A Judge of the Supreme Court of the State of North Carolina.
WILL. H. BATTLE, *J. S. C.*

Endorsed:

I acknowledge due service of the within notice. Mar. 28th, 1867. Jonathan Worth, gov'r of N. C. Filed Ap'l 1, '67. Citation.

17 STATE OF NORTH CAROLINA, *ss:*

To the att'y gen'l of State of North Carolina, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 1st Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of North Carolina, wherein Josiah L. Bell is plaintiff, and

the State of North Carolina defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William H. Battle, one of the justices of the said supreme court of the State, this day of March, in the year of our Lord one thousand eight hundred and sixty-seven.

A Judge of the Supreme Court of the State of South Carolina.
WILL. H. BATTLE, *J. S. C.*

Eendorsed:

Citation. I acknowledge due notice on service of notice. March 30th, 1867. Sim. H. Rogers, att'y gen'l. Filed Ap'l 1, 1867.

Supreme Court U. S., 1866, Dec. term, No. 445. Blagge *et al vs.* North Carolina. Citation and service. Filed 25 May, 1867.